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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Allen v. Similasan Corp.

M. Frank Bednarz,  
*Objector.*

Case No. 3:12-cv-0376-BAS (JLB)

# DECLARATION OF THEODORE H. FRANK IN SUPPORT OF BEDNARZ OBJECTION

Judge: Hon. Cynthia Bashant  
Courtroom: 4B  
Date: August 1, 2016  
Time: 10:30 a.m.

1       Theodore H. Frank declares as follows:

2       1. I have personal knowledge of the facts set forth herein and, if called as a  
 3 witness, could and would testify competently thereto.

4       2. I am the attorney for objector Michael Frank Bednarz in this matter.

5       3. I founded the Center for Class Action Fairness (the “Center” or “CCAF”), a  
 6 501(c)(3) non-profit public-interest law firm based out of Washington D.C., in 2009. In 2015,  
 7 we merged into the non-profit Competitive Enterprise Institute (“CEI”) in Washington, D.C.

8       4. The Center’s mission is to litigate on behalf of class members against unfair  
 9 class action procedures and settlements, and it has won millions of dollars for class  
 10 members. The Center’s work in this and other cases has won class members millions of  
 11 dollars and has received national acclaim. *See, e.g.*, Gina Passarella, *Third Circuit Vacates \$18.5*  
 12 *Mil. Cy Pres Award in Baby Products Class Action*, L. INTELLIGENCER (Feb. 20, 2013); Adam  
 13 Liptak, *When Lawyers Cut Their Clients Out of the Deal*, N.Y. TIMES (Aug. 13, 2013) (calling me  
 14 “the leading critic of abusive class action settlements”); Jeffrey B. Jacobson, *Lessons From*  
 15 *CCAF on Designing Class Action Settlements*, Law360 (Aug. 6, 2013) (discussing Center’s track  
 16 record); Ashby Jones, *A Litigator Fights Class-Action Suits*, WALL ST. J. (Oct. 31, 2011).

17       5. The Center has been successful, winning reversal in twelve federal appeals  
 18 decided to date. *In re EasySaver Rewards Litig.*, No. 13-55373 (9th Cir. Mar. 19, 2015)  
 19 (unpublished); *In re BankAmerica Corp. Secs. Litig.*, 775 F.3d 1060 (8th Cir. 2015); *Pearson v.*  
 20 *NBTY, Inc.*, 772 F.3d 778 (7th Cir. 2014); *Redman v. RadioShack Corp.*, 768 F.3d 622 (7th Cir.  
 21 2014); *In re MagSafe Apple Power Adapter Litig.*, Nos. 12-15757, 12-15782, 2014 U.S. App.  
 22 LEXIS 7708 (9th Cir. Apr. 24, 2014) (unpublished); *In re Dry Max Pampers Litig.*, 724 F.3d 713  
 23 (6th Cir. 2013); *In re HP Inkjet Printer Litigation*, 716 F.3d 1173 (9th Cir. 2013); *In re Baby*  
 24 *Products Antitrust Litigation*, 708 F.3d 163 (3d Cir. 2013); *Dewey v. Volkswagen*, 681 F.3d 170 (3d  
 25 Cir. 2012); *Robert F. Booth Trust v. Crowley*, 687 F.3d 314 (7th Cir. 2012); *Nachshin v. AOL*,

*LLC*, 663 F.3d 1034, 1039 (9th Cir. 2011); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011).

6. In this case, paragraph 21 of the Preliminary Approval Order states that an objection “must contain... identification of the case name, case number, and court for any prior class action lawsuit in which the objector and the objector’s attorney (if applicable) has objected to a proposed class action settlement.”

## Class Action Objections

7. In 2008, before I started CCAF, I objected *pro se* (after dismissing the attorney I initially retained) to the class action settlement in *In re Grand Theft Auto Video Game Consumer Litigation*, No 1:06-md-1739 (SWK) (S.D.N.Y.) because of the disproportionate recovery it gave to class counsel against the class. The district court refused to certify the class and approve the settlement. 251 F.R.D. 139 (S.D.N.Y. 2008).

8. The highly-publicized success of my *Grand Theft Auto* objection caused class members victimized by other bad class action settlements to contact me to see if I could represent them. I started the Center for Class Action Fairness in 2009 to respond to this demand.

9. Through CCAF and CEI, I have represented clients or myself, or supervised CCAF and CEI attorneys, in the following objections to settlements or fee requests, which I color-code as green for successful or partially successful; red for unsuccessful; and white for pending without interim success. If I did not make an appearance in the case at the district court or appellate level, but merely supervised and had authority over a CCAF attorney, I indicate as such:

Case	Result
<i>In re Bluetooth Headset Products Liability Litigation</i> , Case No 2:07-ML-1822-DSF-E (C.D. Cal.)	District court approved the settlement and fee request. On appeal, the Ninth Circuit vacated, 654 F.3d 935 (9th Cir. 2011). On remand, the district court approved the settlement and reduced fees from \$800,000 to \$232,000. We did not appeal again, and received no payment.
<i>In re TD Ameritrade Account Holder Litigation</i> , Case No C 07-2852 VRW (N.D. Cal.)	The objection was successful and the district court rejected the settlement. 2009 U.S. Dist. LEXIS 126407 (N.D. Cal. Oct. 23, 2009). A substantially improved settlement was approved.
<i>Fairchild v. AOL</i> , Case No 09-cv-03568 CAS (PLAx) (C.D. Cal.)	The trial court approved the settlement and fee request. The Center appealed and in November, 2011, the Ninth Circuit reversed, sustaining the Center's objection to the improper <i>cy pres</i> . <i>Nachshin v. AOL, LLC</i> , 663 F.3d 1034 (9th Cir. 2011). On remand, the parties cured the abusive <i>cy pres</i> .
<i>In re Yahoo! Litigation</i> , Case No 06-cv-2737 CAS (FMOx) (C.D. Cal.)	The district court approved the settlement and fee request. I withdrew from representations of my clients during the appeal, and my former clients chose to voluntarily dismiss their appeal. I received no payment. I believe the appeal was meritorious and would have prevailed and that the plaintiffs' tactic of buying off my clients at the expense of the class was unethical.
<i>True v. American Honda Motor Co.</i> , Case No. 07-cv-00287 VAP (OPx) (C.D. Cal.)	The objection was successful and the district court rejected the settlement. 749 F. Supp. 2d 1052 (C.D. Cal. 2010). The parties negotiated a substantially improved settlement in California state court, winning the class millions of dollars more in benefit. Mr. Bednarz appeared for the objector <i>pro hac vice</i> .

Case	Result
1 <i>Lonardo v. Travelers 2    Indemnity</i> , Case No. 06- 3    cv-0962 (N.D. Ohio) 4 5 6 7 8	The parties in response to the objection modified the settlement to improve class recovery from \$2.8M to \$4.8M while reducing attorneys' fees from \$6.6M to \$4.6M and the district court approved the modified settlement and awarded CCAF about \$40,000 in fees. 706 F. Supp. 2d 766 (N.D. Ohio 2010). The "Court is convinced that Mr. Frank's goals are policy-oriented as opposed to economic and self-serving." <i>Id.</i> at 804. We did not appeal, and received no payment beyond that ordered by the court.
9 <i>In re Motor Fuel 10    Temperature Sales Practices 11    Litigation</i> , Case No. 07- 12    MD-1840-KHV (D. 13    Kan.) 14	We objected to the settlement with Costco; the district court rejected the settlement, but approved a materially identical one after our renewed objection. CCAF has also objected to several other settlements (including several with me as the objector), and those objections are pending. An appeal to the Tenth Circuit is pending. The court has not yet finally resolved any fee requests, and our objections to those are also pending.
15 <i>Bachman v. A.G. 16    Edwards</i> , Cause No: 17    22052-01266-03 (Mo. Cir. Ct.) 18 19 20 21 22 23 24 25 26 27 28	The district court approved the settlement and fee request, and the decision was affirmed by the intermediate appellate court. The Missouri Supreme Court declined further review.

Case	Result
1 2 3 4 5 6 7 8 9 10 11 12 <i>Dewey v. Volkswagen</i> , Case No. 07- 2249(FSH) (D.N.J.)	The district court approved the settlement, but reduced the fee request from \$22.5 million to \$9.2 million. CCAF appealed and the settling parties cross-appealed the fee award. On appeal, the Third Circuit sustained CCAF's objection to the Rule 23(a)(4) determination and vacated the settlement approval. 681 F.3d 170 (3d Cir. 2012). On remand, the parties modified the settlement to address CCAF's objection and make monetary relief available to hundreds of thousands of class members who had been frozen out by the previous settlement. The district court awarded CCAF \$86,000 in fees. Other objectors appealed and we defended the district court's settlement approval on appeal. The Third Circuit affirmed the settlement approval and the Supreme Court denied <i>certiorari</i> . We received no payment beyond that authorized by the court.
<i>In re Apple Inc. Securities Litig.</i> , Case No. C-06-5208-JF (N.D. Cal.)	As a result of CCAF's objection, the parties modified the settlement to pay an additional \$2.5 million to the class instead of third-party <i>cy pres</i> . The district court awarded attorneys' fees to CCAF and approved the settlement and fee request. We did not appeal and received no payment beyond that authorized by the court.
13 14 15 16 17 18 19 20 21 22 23 24 <i>Robert F. Booth Trust v. Crowley</i> , Case No. 09-cv-5314 (N.D. Ill.) (Rule 23.1) ( <i>pro se</i> objector)	The district court denied my motion to intervene and dismiss abusive shareholder derivative litigation that sought \$930,000 in fees, and then rejected the proposed settlement. I appealed. On appeal, the Seventh Circuit agreed (1) that my motion to intervene should have been granted and (2) my motion to dismiss should have been granted, and remanded with orders to dismiss the litigation. 687 F.3d 314 (7th Cir. 2012). As a result, Sears shareholders saved \$930,000 in attorneys' fees. I was awarded a few hundred dollars in costs.

Case	Result
<i>In re Classmates.com Consolidated Litigation</i> , Case No. 09-cv-0045-RAJ (W.D. Wash.)	The district court granted CCAF's objection and rejected the settlement. The parties proposed an improved settlement, and the district court sustained our renewed objection to the settlement. The parties modified the settlement again to pay class members over \$2 million more than the original settlement, and the district court agreed with CCAF that the fee request was excessive, reducing the fee request from \$1.05 million to \$800,000. The district court praised CCAF's work and sanctioned plaintiffs \$100,000 (awarded to the class) for its abusive discovery of objectors. 2012 U.S. Dist. LEXIS 83480 (W.D. Wash. Jun. 15, 2012). CCAF did not appeal and did not receive any payment.
<i>Ercoline v. Unilever</i> , Case No. 10-cv-1747 (D. N.J.) ( <i>pro se</i> objector)	The district court approved the \$0 settlement and fee request. I did not appeal, and neither I nor CCAF received any payment.
<i>In re HP Inkjet Printer Litigation</i> , Case No. 05-cv-3580 (N.D. Cal.) ( <i>pro se</i> objector)	The district court approved the settlement and reduced the fee request from \$2.3 million to \$1.5 million. On appeal, the Ninth Circuit vacated the settlement approval and fee award. 716 F.3d 1173 (9th Cir. 2013). On remand, the district court again approved the settlement and reduced the fee request to \$1.35 million. We did not appeal, and received no payment.
<i>In re HP Laserjet Printer Litigation</i> , Case No. 8:07-cv-00667-AG-RNB (C.D. Cal) ( <i>pro se</i> objector)	The trial court approved the settlement, while lowering the attorneys fees from \$2.75M to \$2M. We did not appeal, and received no payment.

Case	Result
1 2 3 4 5 6 7 <i>In re New Motor Vehicles Canadian Export Antitrust Litigation</i> , No. MDL 03-1532 (D. Me.) (I was objector represented by CCAF counsel Dan Greenberg)	The trial court agreed with my objection that the <i>cy pres</i> was inappropriate, and the parties modified the settlement to augment class recovery by \$500,000. The court affirmed the fee request, but awarded CCAF about \$20,000 in fees.
8 9 10 11 <i>Sobel v. Hertz Corp.</i> , No. 06-cv-545 (D. Nev.) (CCAF attorney Dan Greenberg)	The district court agreed with our objection and refused to approve the coupon settlement. The parties litigated, and the district court granted partial summary judgment in the amount of \$45 million, and awarded CCAF fees of \$90,000. The case is pending on appeal by defendant, and CCAF has not yet been paid.
12 13 14 15 16 17 18 <i>Cobell v. Salazar</i> , Case No. 1:96-cv-1285 (TFH) (D.D.C.)	The district court approved the settlement, but reduced the requested fees from \$224 million to \$99 million, and reduced the proposed incentive award by several million dollars, creating over \$130 million of additional benefit to the class. On appeal, the D.C. Circuit affirmed the settlement approval. 679 F.3d 909. CCAF's client retained other counsel and petitioned the Supreme Court to hear the case. The Supreme Court denied the writ of certiorari. We received no payment.
19 20 21 22 <i>Stetson v. West Publishing</i> , Case No. CV-08- 00810-R (C.D. Cal.) (CCAF attorney Dan Greenberg)	The district court sustained our objection and rejected the coupon settlement. The parties proposed a modified settlement that improved class recovery by several million dollars. We did not object to the new settlement, and received no payment.

Case	Result
<i>McDonough v. Toys "R" Us and Elliott v. Toys "R" Us</i> , Case Nos. 2:06-cv-00242-AB, No. 2:09-cv-06151-AB (E.D. Pa.)	The district court approved the settlement and fee request. CCAF appealed, and the Third Circuit vacated the settlement approval and fee award. <i>In re Baby Prods Antitrust Litig.</i> , 708 F.3d 163 (3d Cir. 2013). On remand, the parties negotiated an improved settlement that improved class recovery by about \$15 million. We did not object to the settlement but objected to the renewed fee request. The district court awarded CCAF \$742,500 in fees and reduced class counsel's fees by the same amount. CCAF appealed, but voluntarily dismissed the appeal without receiving any payment beyond what was ordered by the court.
<i>Trombley v. National City Bank</i> , Case No. 10-cv-232 (JDB) (D.D.C.)	The district court approved the settlement and fee request. CCAF did not appeal, and received no payment.
<i>Blessing v. Sirius XM Radio Inc.</i> , Case No. 09-cv-10035 (S.D.N.Y.)	The district court approved the settlement and fee request, and the Second Circuit affirmed in an unpublished order. CCAF petitioned for <i>certiorari</i> . The Supreme Court denied <i>certiorari</i> , but Justice Alito wrote separately to indicate that, while <i>certiorari</i> was inappropriate, the Second Circuit erred in holding CCAF's client did not have standing to challenge the improper class counsel appointment. <i>Martin v. Blessing</i> , 134 S. Ct. 402 (2013).
<i>Weeks v. Kellogg Co.</i> , Case No. CV-09-08102 (MMM) (RZx) (C.D. Cal.) (CCAF attorney Dan Greenberg)	The district court sustained CCAF's objection and refused settlement approval. The parties modified the settlement to largely address CCAF's concerns, creating extra pecuniary benefit to the class. The Center sought and was awarded attorneys fees as a percentage of the benefit conferred, and received no other payment beyond that awarded by the court.
<i>In re Dry Max Pampers Litig.</i> , Case No. 1:10-cv-00301 TSB (S.D. Ohio)	The district court approved the settlement and fee request. On appeal, the Sixth Circuit vacated both orders. 724 F.3d 713 (6th Cir. 2013). On remand, plaintiffs dismissed the meritless litigation, benefiting the class that would not have to pay the higher costs from abusive litigation. We received no payment.

1	Case	Result
2	<i>In re Mutual Funds Investment Litig.</i> , No. 04-md-15862 (D. Md.)	The trial court approved the settlement and fee award. CCAF did not appeal, and received no payment.
3	<i>Barber Auto Sales, Inc. v. UPS</i> , No. 5:06-cv-04686-IPJ (N.D. Ala.) (CCAF attorney Dan Greenberg)	The trial court approved the settlement and fee award. CCAF did not appeal, and received no payment.
4	<i>Brazil v. Dell</i> , No. C-07-1700 RMW (N.D. Cal.) (CCAF attorney Dan Greenberg)	The trial court approved the settlement and fee award. CCAF appealed. After CCAF filed its opening brief in the Ninth Circuit, the trial court modified its opinion approving the settlement and fee award. CCAF chose to voluntarily dismiss its appeal and received no payment.
5	<i>Fogel v. Farmers</i> , No. BC300142 (Super. Ct. Cal. L.A. County)	The trial court approved the settlement and reduced the fees from \$90M to \$72M. The Center was awarded fees and expenses for its objection, and did not appeal, and received no payment beyond what the court ordered.
6	<i>Walker v. Frontier Oil</i> , No. 2011-11451 (Harris Cty. Dist. Ct. Tex.)	The trial court approved the settlement and fee award. On appeal, the Texas Court of Appeals agreed that the \$612,500 fee award violated Texas law, saving shareholders \$612,500. 398 SW 3d 377 (Tex. App. 2013).
7	<i>In re MagSafe Apple Power Adapter Litig.</i> , No. C. 09-1911 JW (N.D. Cal.)	The trial court approved the settlement and fee award. On appeal, the Ninth Circuit in an unpublished decision vacated both orders and remanded for further proceedings. The Center renewed its objection and the district court approved the settlement but reduced fees from \$3 million to \$1.76 million. We did not appeal, and received no payment.
8	<i>In re Online DVD Rental Antitrust Litig.</i> , No. 4:09-md-2029 PJH (N.D. Cal.)	The district court approved the settlement and fee award, and the Ninth Circuit affirmed in an appeal I briefed and argued. 779 F.3d 934 (9th Cir. 2015). We will not seek <i>certiorari</i> , and have not received and will not seek any payment. My objection to a proposed <i>cypres</i> distribution is pending.
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Case	Result
<i>In re Nutella Marketing and Sales Practices Litig.</i> , No 11-1086 (FLW)(DEA) (D. N.J.) (CCAF attorney Dan Greenberg)	The district court approved the settlement, but reduced the fee award by \$2.5 million. We did not appeal, and received no payment.
<i>In re Groupon, Inc., Marketing and Sales Practices Litig.</i> , No. 3:11-md-2238-DMS-RBB (S.D. Cal.) (pro se objection; separately retained in private capacity on appeal)	The district court sustained the objection to the settlement; the parties presented a materially identical settlement and the district court approved that settlement and fee award. I did not appeal and received no payment. Other objectors appealed. After briefing was complete, I was retained by one of the appellants in my private capacity to argue the appeal on a flat-fee basis, and the Ninth Circuit agreed with me in an unpublished order that the district court's settlement approval applied the wrong standard of law, and vacated and remanded. On remand, the parties proposed a new settlement, and I did not object.
<i>In re Johnson &amp; Johnson Derivative Litig.</i> , No. 10-cv-2033-FLW (D.N.J.)	The district court approved the settlement. CCAF appealed and successfully moved to stay the appeal while the fee request was litigated. The district court reduced the fee request from \$10.45 million to about \$5.8 million, saving shareholders over \$4.6 million. CCAF voluntarily dismissed its appeal, and received no payment.
<i>Pecover v. Electronic Arts Inc.</i> , No. C 08-02820 CW (N.D. Cal.) (I objected, represented by CCAF attorney Melissa Holyoak)	The district court honored our objection to the excessive <i>cy pres</i> and encouraged modifications to the settlement that addressed my objection. As a result of the Center's successful objection, the class recovery improved from \$2.2 million to \$13.7 million, an improvement of over \$11.5 million. The Center did not appeal the decision. The district court awarded \$33,975 in attorneys' fees to the Center. The Center received no payment not ordered by the Court.

Case	Result
<i>In re EasySaver Rewards Litigation</i> , No. 3:09-cv-2094-AJB (WVG), No. 3:09-cv-2094-BAS (S.D. Cal.)	The district court approved the settlement and the fee request. On appeal, the Ninth Circuit vacated the settlement approval and remanded for further consideration. We have renewed our objection, which is pending.
<i>In re Citigroup Inc. Securities Litigation</i> , No. 07 Civ. 9901 (SHS) (S.D.N.Y.) ( <i>pro se</i> objection)	The parties agreed to correct the defective notice. Upon new notice, I restricted my objection to the excessive fee request. The district court agreed to reduce the fee request (and thus increase the class benefit) by \$26.7 million. 965 F. Supp. 2d 369 (S.D.N.Y. 2013). I was awarded costs. I appealed the fee decision, but voluntarily dismissed my appeal without further payment. My objection to the <i>cy pres</i> proposal is pending.
<i>City of Livonia Employees' Retirement System v. Wyeth</i> , No. 1:07-cv-10329 (RJS) (S.D.N.Y.)	The district court approved the settlement and reduced fees (and thus increased class benefit) by \$3,037,500. Though the court ultimately agreed in part with our objection to fees, it was critical of our objection, though it mischaracterized the argument we made. The district court criticized the objection as “frivolous” but the First Circuit recently held in a non-CCAF case that the issue of a minimum distribution threshold does indeed make a settlement problematic. We did not appeal, and received no payment.
<i>In re Bayer Corp. Combination Aspirin Prods. Mktg. and Sales Practices Litig.</i> , No. 09-md-2023 (BMC) (JMA) (E.D.N.Y.) (I objected, represented by CCAF attorney Adam Schulman)	Upon my objection, the parties modified the settlement to provide for direct distribution to about a million class members, increasing class recovery from about \$0.5 million to about \$5 million. The district court agreed with my objection to one of the <i>cy pres</i> recipients, but otherwise approved the settlement and the fee request. CCAF was awarded attorneys’ fees. I did not appeal, and neither I nor CCAF received any payment not awarded by the court.

Case	Result
<i>In re Southwest Airlines Voucher Litig.</i> , No. 11-cv-8176 (N.D. Ill.)	The district court approved the settlement, but reduced fees by \$1.67 million. We appealed, and the plaintiffs have cross-appealed; the Seventh Circuit affirmed, but reduced fees further. On remand, class counsel asserted rights to additional fees, and our client's objection to this disregard of the mandate is pending.
<i>Fraley v. Facebook, Inc.</i> , No. 11-cv-01726 (RS) (N.D. Cal.) ( <i>pro se</i> objection)	The district court approved the settlement, but reduced fees by \$2.8 million, which increased the <i>cy pres</i> distribution by the same amount. We did not appeal the settlement approval or fee award, and did not receive any payment. Our request for attorneys' fees was denied, and our appeal of that decision was denied. We did not seek <i>certiorari</i> ; other appellants have.
<i>Pearson v. NBTY</i> , No. 11-CV-07972 (N.D. Ill) (I objected, represented by CCAF attorney Melissa Holyoak)	The district court approved the settlement, but reduced fees by \$2.6 million. On appeal, the Seventh Circuit reversed the settlement approval, and praising the work of the Center. 772 F.3d 778 (7th Cir. 2014). On remand, the settlement was modified to increase class recovery from \$0.85 million to about \$5.0 million. That motion for settlement approval and CCAF's motion for fees is pending.
<i>Marek v. Lane</i> , 134 S. Ct. 8, 571 US – (2013).	In 2013 an objector retained the Center to petition the Supreme Court for a writ of <i>certiorari</i> from <i>Lane v. Facebook.</i> , 696 F.3d 811 (9th Cir. 2012), <i>rehearing denied</i> 709 F.3d 791 (9th Cir. 2013). Although the Supreme Court declined to hear the case, Chief Justice Roberts wrote an opinion respecting denial of <i>certiorari</i> declaring the Court's interest in the issue of <i>cy pres</i> that has been influential in improving many settlements for class members.
<i>Dennis v. Kellogg, Inc.</i> , No. 09-cv-01786 (IEG) (S.D. Cal.)	On remand from a Ninth Circuit decision, the district court approved a modified settlement and the fee request. CCAF did not appeal or receive any payment.
<i>Berry v. LexisNexis</i> , No. 11-cv-754 (JRS) (E.D. Va.) (CCAF attorney Adam Schulman)	The district court approved the settlement and the fee request. The Fourth Circuit affirmed. A <i>certiorari</i> petition is pending.

Case	Result
<i>In re BankAmerica Corp. Secs. Litig.</i> , No. 13-2620 (8th Cir.)	CCAF was retained as appellate counsel on behalf of a class representative objecting to a <i>cy pres</i> distribution and supplemental fee award, and prevailed. 775 F.3d 1060 (8th Cir. 2015). As a result, the class will receive an extra \$2.6 to \$2.7 million, plus any proceeds from pending collateral litigation against third parties.
<i>Redman v. RadioShack Corp.</i> , No. 11-cv-6741 (N.D. Ill.)	The district court approved the settlement and the fee request. On appeal, the Seventh Circuit reversed, upholding our objection. 768 F.3d 622 (7th Cir. 2014). The case is pending on remand, but is presumably extinguished by RadioShack's bankruptcy. We were awarded costs.
<i>Richardson v. L'Oréal USA</i> , No. 13-cv-508-JDB (D.D.C.) (CCAF attorney Adam Schulman)	The district court sustained our objection to the settlement. 991 F. Supp. 2d 181 (D.D.C. 2013). We received no payment.
<i>Gascho v. Global Fitness Holdings, LLC</i> , No. 2:11-cv-436 (S.D. Ohio)	The district court approved the settlement and fee request. The Sixth Circuit affirmed in a 2-1 decision. We will seek <i>certiorari</i> .
<i>Steinfeld v. Discover Financial Services</i> , No. 3:12-cv-01118-JSW (N.D. Cal.)	We withdrew the objection upon assurances from the parties about the interpretation of some ambiguous settlement terms. We received no payment.
<i>In re Aetna UCR Litigation</i> , No. 07-3541, MDL No. 2020 (D.N.J.) (I was a <i>pro se</i> objector with assistance from local counsel)	While our objection was pending, the defendant invoked its right to withdraw from the settlement. The litigation is pending.
<i>Poertner v. The Gillette Co.</i> , No. 6:12-cv-00803 (M.D. Fla.)	The district court approved the settlement and the fee award, and the Eleventh Circuit affirmed in an unpublished order, and the Supreme Court denied <i>certiorari</i> .

Case	Result
1 2 3 4 5 <i>In re Google Referrer Header Privacy Litigation</i> , No. 10-cv-04809 (N.D. Cal.) (I was the <i>pro se</i> objector)	The district court approved the settlement and the fee award. The Ninth Circuit appeal is pending.
6 7 8 <i>Delacruz v. CytoSport, Inc.</i> , No. 4:11-cv-03532-CW (N.D. Cal.) (I was a <i>pro se</i> objector)	I joined in part the <i>pro se</i> objection of former CCAF intern Will Chamberlain. The district court approved the settlement and the fee award. We did not appeal, and received no payment.
9 10 11 12 13 <i>In re American Express Anti-Steering Rules Antitrust Litigation</i> , No. 11-md-2221 (E.D.N.Y.) (CCAF attorney Adam Schulman)	We objected and the district court rejected the settlement. We have neither sought nor received payment.
14 15 16 17 18 19 20 21 22 23 <i>In re Capital One Telephone Consumer Protection Act Litigation</i> , 12-cv-10064 (N.D. Ill.)	Our objection was only to the fee request, and the district court agreed to a reduction of about \$7 million in fees. We appealed seeking further reductions, but plaintiffs offered to pay our client \$25,000 to dismiss his appeal, and he accepted the offer against our recommendation and his earlier promise to us. Ethics rules prohibited us from interfering with the client's decision. CCAF received no payment. Seventh Circuit law requires the court to investigate before granting a motion to voluntarily dismiss an appeal of a class action settlement approval, but no investigation was performed, despite extensive press coverage of our protest of class counsel's unethical behavior.
24 25 26 27 <i>Lee v. Enterprise Leasing Company-West, LLC</i> , No. 3:10-cv-00326 (D. Nev.) (CCAF attorney Melissa Holyoak)	The district court approved the settlement and the fee request. CCAF did not appeal, and received no payment.

1	Case	Result
2	<i>Jackson v. Wells Fargo</i> , No. 2:12-cv-01262- DSC (W.D. Pa.)	The district court approved the settlement and the fee request. CCAF did not appeal, and received no payment. CCAF attorney Adam Schulman represented the objector.
3	<i>In re Transpacific Passenger Air Transp. Antitrust Litig.</i> , No. 3:07-cv-05634-CRB (N.D. Cal.)	The district court approved the settlement, but reduced the Rule 23(h) request for fees and expenses by over \$5.1 million, for the benefit of the class. The district court awarded CCAF fees. Our appeal of the settlement approval (which, if successful, would nullify our fee award) is pending.
4	<i>Careathers v. Red Bull N. Am., Inc.</i> , No. 1:13-cv- 0369 (KPF) (S.D.N.Y.) (I objected, represented by CCAF attorney Erin Sheley)	The district court approved the settlement, but reduced the fee request by \$1.2 million. We did not appeal, and received no payment.
5	<i>In re Riverbed Securities Litigation</i> , Consolidated C.A. No. 10484-VCG (Del. Ch.)	CCAF assisted <i>pro se</i> objector Sam Kazman. The court approved the settlement and reduced the fee request.
6	<i>In re Target Corp. Customer Data Security Breach Litig.</i> , MDL No. 14-2522 (PAM/JJK) (D. Minn.)	The district court denied our objection. Our appeal in the Eighth Circuit is pending.
7	<i>In re Polyfoam Antitrust Litig.</i> , No. 10-MD-2196 (N.D. Ohio)	We objected to the fees and the <i>cy pres</i> proposal, and the district court reduced fees and rejected plaintiffs' proposed <i>cy pres</i> recipient. We did not appeal and received no payment.
8	<i>Hays v. Walgreen Co.</i> , No. 14-C-9786 (N.D. Ill.)	We objected to a \$0 settlement that provided only worthless disclosures to the shareholder class. Our appeal in the Seventh Circuit is pending.
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1	Case	Result
2	<i>In re Subway Footlong Sandwich Mktg. &amp; Sales Pract. Litig.</i> , No. 2:13-md-2439-LA (E.D. Wisc.)	I objected, represented by CEI attorney Adam Schulman. The district court approved the settlement and fee request over my objection. Our appeal in the Seventh Circuit is pending.
5	<i>In re Colgate-Palmolive SoftSoap Antibacterial Hand Soap Mktg. &amp; Sales Pract. Litig.</i> , No. 12-md-2320 (D.N.H.)	CEI attorney Anna St. John objected <i>pro se</i> . The district court approved the settlement and fee request over her objection. She filed an appeal to the <i>cypres</i> provision of the settlement and dismissed the appeal without payment once the <i>cypres</i> issue became moot.
9	<i>Doe v. Twitter, Inc.</i> , No. CGC-10-503630 (Cal. Sup. Ct. S.F. Cty.)	The district court approved the settlement over our objection, but reduced attorneys' fees. We are evaluating whether to appeal.
11	<i>Rodriguez v. It's Just Lunch Int'l</i> , No. 07-cv-9227 (SHS)(SN) (S.D.N.Y.)	CEI attorney Anna St. John appeared on behalf of an objector, and our objection is pending.
14	<i>Rougvie v. Ascena Retail Group</i> , No. 15-cv-724 (E.D. Pa.)	CEI attorney Adam Schulman appeared on behalf of two objectors, and our objection is pending.

17        10. As the chart shows, CEI and CCAF achieve success or partial success in the  
 18 vast majority of their objections, and have won tens of millions of dollars for class members,  
 19 as well as numerous landmark appeals.

20        11. We have informal agreements with three other sets of class members to file  
 21 objections in July and August. In some cases we are waiting for additional disclosures, as the  
 22 fairness of the settlement is affected by the claims rate.

23        12. In the five cases which I list below, I was retained in my private capacity to  
 24 represent appellants in cases where CCAF did not have a client. In each case, my retainer was  
 25 for a flat fee, and if the lead attorney or client chose to settle an appeal, I received no  
 26 additional payment. I would only accept the work if I believed the appeal was meritorious.  
 27 One of these appeals was in the *Groupon* case in the 9th Circuit listed above.

Case	Result
<i>Eubank v. Pella Corp.</i> , 753 F.3d 718 (7th Cir. 2014).	I was retained on a flat-fee basis for briefing and argument of the appeal. The Seventh Circuit reversed settlement approval and ordered the reinstatement of defrocked class representatives. I am not aware of the status of the case on remand and have not been involved since the rehearing petition was denied and mandate issued.
<i>In re Toyota Motor Corp. Unintended Acceleration Litigation</i> , Nos. 13-56458 (L), 13-56468 (9th Cir.)	I was retained on a flat-fee basis to participate in the appeal and assist with the successful opposition to a motion for an appeal bond. The objecting client chose to voluntarily dismiss his appeal in response to a settlement offer, and I withdrew from representation before the dismissal. I received no payment from the plaintiffs or defendants. I believe the appeal was meritorious, and the arguments that I planned to make on behalf of the objector were later adopted by the Eighth Circuit in <i>BankAmerica Corp.</i>
<i>In re Deepwater Horizon Economic and Property Settlement Appeals</i> (No. 13-30095) and <i>In re Deepwater Horizon Medical Settlement Appeals</i> (No. 13-30221) (5th Cir.)	I was retained by counsel for five appellants on a flat-fee basis. After oral argument in 13-30095 and after briefing in 13-30221, three of the appellants retained new counsel who voluntarily dismissed their appeals; I do not know what deal they made, and I received no payment. The two remaining appellants chose to move to voluntarily dismiss their appeals without recompense. I received no payment from the plaintiffs or defendants or objectors. I believe the appeals were meritorious, and many of the arguments I made in the briefing were adopted by the Seventh Circuit in <i>Eubank</i> .

Case	Result
1 <i>In re CertainTeed</i> 2 <i>Fiber Cement</i> (No. 3    14-1882) (3d Cir.) 4 5 6 7 8 9 10 11	I was retained on a flat-fee basis to work on the appeal after assisting counsel for the objector in the district court on an hourly basis. (In response to the district-court objection, the parties modified the settlement to bar reversion to the defendant, which was worth some amount of money to the class, but the district court denied a motion for attorneys' fees for the objector.) As cross-motions were pending in the Third Circuit, the parties settled, and I withdrew from representation, and the objectors dismissed their appeal. I received no payment from the plaintiffs or defendants. I believe the appeal was meritorious because the district court failed to comply with <i>Baby Products Antitrust Litigation</i> 's requirement to determine the actual payment to the class. The settlement approved by the district court was akin to that rejected by the Seventh Circuit in <i>Eubank</i> .
12 <i>Fladell v. Wells Fargo</i> 13 <i>Bank</i> , No. 13-cv- 14    60721 (S.D. Fla.) 15 16 17 18 19 20 21 22	I was paid on an hourly basis to provide a draft objection to the attorneys for a pair of objectors, and then a declaration in support of the objection. After I submitted the declaration, a current CCAF client contacted me and suggested that I had a conflict of interest, and asked me to withdraw from the <i>Fladell</i> case. I disagreed that there was a conflict of interest, but received permission to withdraw to avoid any collateral dispute with my clients, and waived my hourly fee. I believe the objection was meritorious, and the district court's decision approving the settlement and overruling objections without determining actual benefit to the class contradicted <i>In re Baby Products</i> and <i>Pearson v. NBTY</i> , among other decisions. I did not participate in the appeal, and did not receive any money from its settlement.

23    13. There were several other cases where CCAF did not have a client where I  
24    consulted in my private capacity with attorneys representing objecting class members in cases  
25    about legal strategy for objections on an hourly basis or flat-fee basis, sometimes providing  
26    draft objections or outlines or draft briefs or draft responses to motions for appeal bonds or  
27    sanctions, sometimes providing copies of relevant public filings I had previously made,

1 sometimes recommending that no objection be pursued. Because I did not file an objection  
2 as either counsel or objector in those cases, because I had no attorney-client relationship with  
3 the objector, because I was not the ultimate legal decisionmaker in those cases, because the  
4 ultimate legal decisionmaker in those cases did not always follow my advice or keep me  
5 apprised of the status of the case, because I withdrew from continued participation in several  
6 pending cases in June 2015, and because of contractual confidentiality obligations, I do not  
7 list them in this declaration. I similarly do not list numerous cases where objectors or  
8 attorneys or settling parties have discussed pending objections or collateral litigation with me  
9 and I have provided copies of public CCAF filings as a favor without payment or creating an  
10 attorney-client relationship.

11 14. I no longer accept paid representation in such cases in my private capacity with  
12 attorneys who have a track record of dismissing appeals because the Center plans to engage  
13 in litigation to create precedent requiring objectors and their counsel to equitably disgorge  
14 payments received without court approval for withdrawing objections or appeals, and I  
15 wanted to avoid conflicts of interest while the Center engaged in such litigation. I note that it  
16 would be simple enough for the settling parties to stipulate to settlement procedures  
17 definitively deterring bad-faith objectors by including an order forbidding payment to  
18 objectors without disclosure and court approval. Instead they have imposed abusively  
19 burdensome requirements on objection that will do little to deter bad-faith objectors while  
20 forcing attorneys for good-faith objectors to waste dozens of hours. Both CEI and Mr.  
21 Bednarz have expressed a willingness to be bound by an injunction barring us from settling  
22 this objection for payment without court approval if there is any doubt as to our good-faith  
23 intentions in objection to an unfair settlement and fee request.

24 15. A website purporting to list other cases where I acted as an attorney or objector  
25 is inaccurate, listing me in several cases where I had no role, made no appearances, and had  
26 no attorney-client relationship with the objector, and falsely attributing filings I had nothing  
27 to do with to me. The website is further inaccurate in omitting dozens of my successful  
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1 objections, falsely characterizing successful objections as having been overruled entirely, and  
 2 misrepresenting the substance of court filings and testimony.

3 16. CEI pays me on a salary basis that does not vary with the result in any case. I do  
 4 not receive a contingent bonus based on success in any case, a structure that would be  
 5 contrary to I.R.S. restrictions.

6 17. In my experience, class counsel responds to Center objections by making a  
 7 variety of *ad hominem* attacks. In an effort to anticipate them and to avoid collateral litigation  
 8 over a right to file a reply, I discuss and refute the most common ones below,

9 18. CCAF refuses to engage in *quid pro quo* settlements, and has never withdrawn an  
 10 objection in exchange for payment. Instead, it is funded entirely through charitable donations  
 11 and court-awarded attorneys' fees. The difference between a so-called "professional  
 12 objector" and a public-interest objector is a material one. As the federal rules are currently set  
 13 up, "professional objectors" have an incentive to file objections regardless of the merits of  
 14 the settlement or the objection. In contrast, a public-interest objector such as myself has to  
 15 triage dozens of requests for *pro bono* representation and dozens of unfair class action  
 16 settlements, loses money on every losing objection (and most winning objections) brought,  
 17 can only raise charitable donations necessary to remain afloat by demonstrating success, and  
 18 has no interest in wasting limited resources and time on a "baseless objection." CCAF objects  
 19 to only a small fraction of the number of unfair class action settlements it sees; indeed, I  
 20 personally object to only a fraction of the number of unfair class action settlements where I  
 21 am a class member. (While one district court called me a "professional objector" in the  
 22 broader sense, that court stated that it was not meant pejoratively, and awarded CCAF fees  
 23 for a successful objection and appeal that improved the settlement for the class. *Dewey v.*  
 24 *Volkswagen*, 909 F. Supp. 2d 373, 396 n.24 (D.N.J. 2012).)

25 19. CCAF has no interest in pursuing "baseless objections," because every  
 26 objection we bring on behalf of a class member has the opportunity cost of not having time  
 27 to pursue a meritorious objection in another case. We are confronted with many more  
 28

1 opportunities to object (or appeal erroneous settlement approvals) than we have resources to  
 2 use, and make painful decisions several times a year picking and choosing which cases to  
 3 pursue, and even which issues to pursue within the case. CCAF turns down the opportunity  
 4 to represent class members wishing to object to settlements or fees when CCAF believes the  
 5 underlying settlement or fee request is relatively fair.

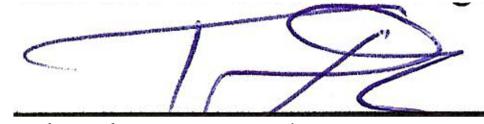
6       20. CCAF does not have an “ideological crusade against class actions.” As a child, I  
 7 admired Ralph Nader and consumer reporter Marvin Zindler (whose autographed photo was  
 8 one of my prized childhood possessions), and read every issue of *Consumer Reports* from cover  
 9 to cover. I have focused my practice on conflicts of interest in class actions because, among  
 10 other reasons, I saw a need to protect consumers that no one else was filling, and as a way to  
 11 fulfill my childhood dream of being a consumer advocate. I have publicly stated my support  
 12 for the class-action mechanism as a means of aggregating litigation of similarly situated class  
 13 members, including in multiple declarations under oath, and in a nationally-broadcast C-  
 14 SPAN panel discussing CCAF’s work. On multiple occasions, successful objections brought  
 15 by CCAF have resulted in new class-action settlements where the defendants pay  
 16 substantially more money to the plaintiff class without CCAF objecting to the revised  
 17 settlement.

18       21. The *Lonardo* decision mentioned above made a snide comment about one of the  
 19 arguments I made on behalf of a client, and class counsel often quotes it out of context to  
 20 accuse CCAF of making baseless objections. But CCAF was ultimately successful in the  
 21 Seventh and Ninth Circuits on the single argument *Lonardo* criticized as supposedly “short on  
 22 law.” Even if *Lonardo* was correct in 2010 that CCAF’s policy-based argument was “short on  
 23 law,” it is no longer correct after *Bluetooth* and *Pearson* agreed that reversionary clauses are a  
 24 problematic sign of self-dealing.

25  
 26 I declare under penalty of perjury under the laws of the United States of America that the  
 27 foregoing is true and correct.

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2 Executed on June 30, 2016, in Washington, DC.  
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Theodore H. Frank

## CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically served the foregoing on all CM/ECF participating attorneys at their registered email addresses, thus effectuating electronic service under S.D. Cal. L. Civ. R. 5.4(d).

DATED this 1st day of July, 2016.

/s/ Theodore H. Frank  
Theodore H. Frank

**CERTIFICATE OF SERVICE PURSUANT TO CLASS NOTICE  
AND PRELIMINARY APPROVAL ORDER**

Pursuant the requirements of class notice and Preliminary Approval Order, Dkt. 204 ¶ 23, I hereby certify that on this day I caused service of the forgoing on the following parties:

<p>Ronald A. Marron          Law Offices of Ronald A. Marron, APLC          651 Arroyo Drive          San Diego, CA 92103          Telephone: 619-696-9006</p>	<p><i>Via Federal Express</i></p>
<p>Michelle Gillette          Crowell &amp; Moring LLP          275 Battery St., 23rd Floor          San Francisco, CA 94111          Telephone: 415-986-2800</p>	<p><i>Via Federal Express</i></p>
<p>Allen v. Similasan          c/o KCC LLC          P.O. Box 8060          San Rafael, CA 94912-8060</p>	<p><i>Via First Class Mail</i></p>

DATED this 1st day of July, 2016.

/s/ Theodore H. Frank  
Theodore H. Frank